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No. 94-1316

In The Supreme Court Of The United States

October Term, 1994

SOUTHVIEW FARM AND RICHARD H. POPP,
Petitioners,

v.

CONCERNED AREA RESIDENTS FOR
THE ENVIRONMENT, et al., Respondents,

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit

BRIEF *AMICUS CURIAE* OF THE NORTHEAST DAIRY PRODUCERS ASSOCIATION IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Whether a dairy farm, using its animal waste to fertilize cropland adjacent to its cattle housing facilities, is a "concentrated animal feeding operation" and thus a point source subject to the permit requirements of the Clean Water Act.

2. Whether previously applied liquid manure, washed from fields by a rain storm, constitutes an "agricultural stormwater discharge," exempt from the Clean Water Act's definition of point sources.

3. Whether vehicles spreading manure onto cropland or depressions in fields, neither of which directly discharge pollutants into navigable waters, may constitute point sources subject to the permit requirements of the Clean Water Act.

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BRIEF *AMICUS CURIAE* OF THE NORTHEAST DAIRY PRODUCERS ASSOCIATION IN SUPPORT OF PETITIONERS

PRELIMINARY STATEMENT

The Northeast Dairy Producers Association ("NEDPA") submits this brief as *amicus curiae*, pursuant to Rule 37.2 of the Rules of this Court, in support of Petitioners, Southview Farm and Richard H. Popp (the "Petitioners"). The written consents of Petitioners and

Respondents to the filing of this *amicus curiae* brief are attached as Appendix A.

INTEREST OF NEDPA AS *AMICUS CURIAE*

NEDPA is an association of 75 forward-looking dairy producers committed to an efficient, profitable, environmentally-conscious and consumer-oriented dairy industry in the northeast. NEDPA's members, located primarily in New York State, own and operate farms on which approximately 37,000 dairy cows are milked. The production from these farms accounts for more than $111 million of gross annual sales. The 29 associate members of NEDPA represent the interests of agribusiness, from veterinarians and consultants to lenders and cooperatives.

NEDPA endeavors to encourage and provide forums for the free exchange of ideas among producers, to provide leadership and financial support for addressing industry issues, to develop and support programs that encourage young people to establish careers in the dairy industry and to work with government to ensure a favorable business climate in the northeast. To that end, NEDPA sponsors informational meetings, conferences, tours and university research on industry issues. In addition, NEDPA members are actively involved in organizations representing the breadth of the dairy industry, and agriculture generally, at the local, state, regional and national level. NEDPA members are industry and community leaders.

The questions presented in the Petition transcend the interests of the parties to this case. The ultimate answers to the questions are of particular importance to the future of NEDPA and its members, and to the dairy industry in New York, the northeast and throughout the United States. The Second Circuit would implement a permit system and impose

strict regulations on long-standing farming practices and research-based recommendations relating to the use and management of animal wastes, which have never been the subject of governmental controls. Crop management practices that have been used for centuries would be impacted irreversibly. Regulatory compliance and the necessary transformation of production methods would add significantly to dairy production costs, placing an industry currently suffering from declining operating margins in an even more precarious position.

Judicial imposition of "permitting requirements" on farmers who are recycling natural, organic material to the land, would be in direct contradiction of Congressional legislation and Environmental Protection Agency ("EPA") regulation exempting such actions, and is ill-advised and irresponsible.

ARGUMENT

The decision of the Second Circuit (*Concerned Area Residents for the Environment v. Southview Farm*, 34 F.3d 114 (2d Cir. 1994)) disregards the practical import and effect of regulating animal waste management practices as point source discharges. The holding also ignores Congressional policy and directives relative to these issues and goes far beyond the scope of regulation intended by Congress in the Clean Water Act.

It is for these reasons that this Court should grant certiorari. The Second Circuit should not be allowed to usurp the powers of Congress and embark on its own program of judicial legislation and regulation. Allowing its decision to stand will significantly harm the dairy industry, specifically, and agriculture generally.

I. THE ISSUES PRESENTED BY THE PETITION ARE OF VITAL IMPORTANCE.

A. Local and State Economies are Dependent Upon the Substantial Contributions of Agriculture and the Dairy Industry.

Agriculture is New York State's largest industry. Roughly 8.2 million acres of land are utilized for agricultural production. New York Agricultural Statistics Service, New York State Department of Agriculture and Markets with United States Department of Agriculture, *New York Agricultural Statistics 1993 - 1994* (hereinafter *New York Agricultural Statistics*) 6. Land in agriculture accounts for 27% of New York's total land area. *Id.* On this land base, New York's farmers generate in excess of $2.6 billion in agricultural product sales. Department of Agricultural, Resource, and Managerial Economics, Cornell University, E.B. 94 - 26, *Census of Agriculture Highlights; New York State, 1992* (hereinafter *Census of New York Agriculture*) 9. More than 50% of these sales ($1.4 billion) are dairy products. *Id.*

Much of the cropland in New York, and the northeast, is best suited for growing forage crops. These, in turn, are converted most efficiently by dairy animals into saleable products. *Id.* at 2. As a result, dairying is the dominant industry in most upstate New York counties, as well as elsewhere in the northeast. As the third-ranking state in milk production, New York's agricultural economy is critically dependent upon the dairy industry. *New York Agricultural Statistics*, at 12.

In almost every county of New York, farm expenditures on inputs for production exceed $20 million,

adding significantly to each counties' economy. *Census of New York Agriculture*, at 30 & 54. The importance of this "value-added" element is also seen in the multiplier effect of local agriculture. Common estimates place the agricultural multiplier in the range of $3.00 - $5.00 (e.g., for every dollar received from farmers for selling agricultural goods and services, $3.00 - $5.00 are earned by local businesses and processors serving farmers and their customers). American Farmland Trust, *Is Farmland Protection a Community Investment?* 3 (1993). No industry has a comparable multiplier. By way of comparison, the estimated multipliers for the service and trade industries are 25% and 30% less than that for agriculture.

"Cost of community service studies," demonstrating the relationship between the real property tax revenues generated by an industry and the cost of services provided to that industry, reveal other benefits of agriculture to local economies. Typically, such studies find that for every dollar of revenue raised from the residential sector, local municipalities spend approximately $1.12 on public services. *Id.* at 2, 21 - 24. For every dollar raised from agricultural lands, only 33¢ is spent on services, leaving 67¢ to off-set other public and community expenses. *Id.*

U.S. agriculture, and the dairy industry in particular, has become a leader in the low-cost production of food. American farmers are the world's most productive; each farmer produces food and fiber for an estimated 128 people -- 94.3 people in the United States and 33.7 people abroad. American Farm Bureau Federation, *Farm Facts*, at 18 (Data supplied by United States Department of Agriculture). Each consumer in the United States is supported annually by the output from only one and one-quarter acres of land. *Id.* at 21. Consumers in this country spend a smaller percentage (10 - 13%) of their income on food than consumers in other

countries. *Id.* at 17; World Bank, *World Development Report 1992 - Development and the Environment* 236 - 37 (1992). By comparison, French consumers spend 16 - 17% of their income on food, Japanese 18%, Russian 28%, and Mexican 33 - 35%. *Id.*

Put simply, agriculture generates substantial direct and indirect economic benefits for local and state economies, while imposing few burdens upon them. Furthermore, consumers in this country, as well as abroad, have come to know, depend upon and demand the low-cost, high-quality food produced by American farmers. Imposing additional costs and unnecessary regulation on agriculture will not only hurt individual farmers, but will also weigh heavily on other sectors of our society.

B. Agricultural Products are Generated at Slim and Decreasing Margins, and Under Conditions Largely Beyond the Control of Individual Farmers. Adding to the Costs of Production Will Cripple the Industry.

In 1993, the average net cash return per farm in the State of New York was approximately $14,100. *Census of New York Agriculture,* at 12. Between 1983 and 1993, operating margins for New York dairy farmers declined by 75¢ per hundred weight of milk sold. Department of Agricultural, Recourse, and Managerial Economics, Cornell University, R.B. 94 - 07, *Dairy Management Business Summary; New York State 1993*, at 3 (hereinafter *Dairy Business Summary*). Considering that the price per hundred weight of milk over this same period averaged $13.21, this reduction in operating margin is substantial. *New York Agricultural Statistics*, at 76.

Since 1937, the Secretary of Agriculture has regulated the price paid to producers of raw milk through the milk marketing order system. 7 U.S.C. § 601 et seq. (1980). While these governmentally established prices are designed to stabilize prices and establish price floors, they are, for all practical purposes, the actual prices paid to producers. The sheer number of producers makes it impossible for individual farmers to exert market power and effect the price paid for their milk. As a result, the price received by dairy producers for their milk is a matter beyond their control. Dairy producers cannot pass along any increases in the costs of production. This is a situation they must accept and factor into their business equation.

Given the limited ability to effect the price of outputs and thereby pass along increased production costs, dairy producers are left to control these costs, as best they can. Of the total costs of producing milk, feed and crop expenses constitute approximately 30%. *Dairy Business Summary*, at 27. Much of this expense derives from purchased grains and feed concentrates needed to provide a nutritionally balanced ration to dairy cattle. In a manner similar to the price controls placed upon milk, the Secretary of Agriculture regulates the price of many feed grains. 7 U.S.C. § 1421 et. seq. (1988). As a result, producers have little to no control over the cost of purchased feed inputs. Furthermore, even if dairy producers can manage the costs of "home grown" feed stuffs, the degree of management is always subject to an unknown and unmanageable factor -- the weather.

Because dairy producers do not control the price of their product and cannot exert substantial control over one of the largest components of their expenditures, management of all remaining production costs is of great importance. The Second Circuit's holding would impose substantial additional

costs on the production of dairy products; costs which will fall directly on individual farmers.

C. The Recycling of Animal Waste is an Essential Part of Farm Nutrient Management Programs. It Renders Substantial and Essential Benefits to the Economic and Environmental Well-Being of Farms and their Surrounding Landscapes.

In the face of declining operating margins, dairy farmers have adopted more effective and efficient feeding strategies and crop management systems to reduce the costs of production and maintain profitability. Utilization of naturally occurring, organic animal wastes as part of a nutrient management program is an essential component of any dairy production and crop management system.

Agriculture, and the dairy industry in particular, have long recycled the naturally occurring, organic, animal waste, known as manure, as part of their production and management efforts. Rather than treat these byproducts as refuse for disposal, farmers have, consistent with recommendations from agricultural scientists, used and recycled manure as part of their management efforts. By recycling nutrients from animals to crops and back to the animals again, farmers can increase crop and animal productivity and minimize nutrient losses that damage the environment. Stuart Klausner, Department of Soil, Crop and Atmospheric Sciences, Cornell University, 95WFPI, *Nutrient Management: Crop Production and Water Quality* 3 - 4, 34 (1995). The benefits of nutrient management include reduced dependency on chemical fertilizers, improved soil quality, and the efficient and economic production of feed and animal products. *Id.*

The Second Circuit's holding would wipe out long-standing, recommended practices and inhibit the productive use of animal waste, in favor of its treatment as mere refuse and offal. The holding would also impede industry efforts to increase efficiency and production, both of which ultimately benefit consumers. The regulations and practices that will be forced upon the industry as a result of the holding will substantially increase the costs of production to individual farmers, with the resulting impact felt on the farm, in the grocery store and on local economies.

II. THE SECOND CIRCUIT DECISION IS INCONSISTENT WITH LAW AND INCOMPATIBLE WITH ESSENTIAL FARM PRACTICES. IT WILL RENDER THESE PRACTICES UNECONOMICAL, TO THE EXTREME DETRIMENT OF THE INDUSTRY.

The alleged Clean Water Act violations at issue in this case relate to the application of liquid manure onto cropland from tank spreaders and a spray pivot system. At no time did Southview dump manure into navigable waters. The alleged discharge was not from a discrete point, but was diffuse runoff from cultivated croplands. This migration of previously applied manure occurred after rain storms. The resulting stormwater runoff from the fields contained some of the previously applied manure.

The Second Circuit's holding represents a tortured interpretation of the definitions of "point source discharge" and "concentrated animal feeding operation." It also completely disregards the Congressional exemption and underlying policies adopted to benefit agriculture. The holding violates the long-standing legal principles of separation of power and judicial restraint. If allowed to

stand, the holding will damage agriculture, individual farmers, local and state economies and consumers.

A. The Second Circuit's Expansion of the Point Source Discharge Definition to Vehicles and Depressions that Do Not Discharge to Navigable Waters is Unreasonable and Will Devastate American Agriculture.

Point sources of pollutant discharge, which are regulated by pollution discharge elimination system permits, are restricted to a "discernable, confined and discrete conveyance." 33 U.S.C. § 1362(14) (Supp. 1994). They include pipes, ditches, channels and the like, through which pollutants are discharged to navigable waters. *Id.* By contrast, nonpoint source pollution "does not result from a discharge at a specific, single location (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation." U.S. EPA, Office of Water, *Nonpoint Source Guidance* 2 (1987). Nonpoint sources of pollution are regulated by the states through their land use decisions. 33 U.S.C. §§ 1288 and 1329 (1986 & Supp. 1994). By definition the term point source "does not include agricultural storm water discharges and return flows from irrigated agriculture." 33 U.S.C. § 1362(14) (Supp. 1994). Congressional intent could not be more clearly or more directly stated.

Departing from the point/nonpoint dichotomy established by Congress, the Second Circuit made the extreme finding that vehicles spreading manure onto cropland, in accordance with standard crop fertilization procedures, constitute point sources of discharge. 34 F.3d 114, 119. In a like manner, the Court opined that a depression in a field is

itself a point source. *Id.* at 118 - 19. Each of the Court's holdings disregards the "discreteness" or the "directness," or lack thereof, of the "discharge" being analyzed. The holdings make discharges to the ground and discharges to low spots on a farm direct discharges to navigable waters.

The Second Circuit's own recitation of the facts illustrates the remoteness and defuse nature of any "discharge" -- liquid manure was spread onto cropland containing a swale. There is no indication the liquid manure then flowed directly to a navigable water. Instead, following a rainfall, some of the manure, now mixed with rain water, spread, ultimately reaching a pipe that ran under a stonewall bounding the cropland; the pipe in turn lead to a ditch, and the ditch lead to a stream. *Id.* at 118 - 21. This is not a direct discharge; it is stormwater runoff.

In effect, the Second Circuit's new point source discharge definition would subject any manure spreading vehicle and any open cropland to point source permitting restrictions. Its interpretation is apparently based upon the supposition that derivatives of materials spread upon cropland could, at some later point, reach navigable waters. With the sweep of its pen, the Second Circuit has effectively redefined long-recognized nonpoint sources as point sources.

The Second Circuit's unwarranted and unreasonable extension of the point source discharge definition would subject all of New York's approximately 9,700 dairy farms, as well as the estimated 140,000 dairy farms in the United States, to the requirement of obtaining a "point source" permit. This judicially-created permit requirement of the Second Circuit is in direct conflict with the express language of the Clean Water Act and its implementing regulations, which seek to control <u>direct</u> discharges to navigable waters. The decision would impose a tremendous burden on dairy

producers. The need to correct the decision becomes all the more imperative when one considers the size of the program and administrative budget that will be needed to undertake such a permitting program. Legislative and administrative processes are designed to examine and evaluate such issues. The provisions of the National Environmental Policy Act ("NEPA"), Administrative Procedure Act ("APA") and related statutes apply. Judicial legislation is not the process by which such a fundamental change in permitting requirements is enacted.

B. The Second Circuit's Application of the CAFO Definition is Incompatible with Viable Agricultural Practices and Inconsistent with the Law.

Under the Second Circuit's holding, the definition of a concentrated animal feeding operation ("CAFO") is rendered nonsensical. The Second Circuit misunderstands the dairy production process when it determines that, in order to avoid the CAFO characterization, Southview, and similarly situated dairy farms, must grow vegetation in areas of animal confinement. The Second Circuit's holding also evidences a misunderstanding of the ability of farmland, on which crops are grown, to absorb, assimilate and utilize, to the benefit of the business and the environment, animal wastes. Lastly, the Court underestimates the central and essential role that these processes play in the production of agricultural products.

The Court's holding is not only incompatible with agricultural practices, but also with the express language and intent of the applicable regulations.[1] A straight forward

[1] The Second Circuit's apparent misapprehension is understandable in light of the fact that the CAFO characterization of Southview Farm was never

reading of the regulations reveals that Southview Farm and the activities at issue in this case simply do not fall within the CAFO definition.

A farm must first qualify as an "animal feeding operation" in order to even be considered as a CAFO. Excluded from regulated animal feeding operations are livestock farms that grow crops or vegetation "over any portion of the lot or facility." 40 C.F.R. § 122.23 (1994) (emphasis added). The use of the disjunctive "or" evidences a crucial regulatory distinction between a "lot" and the "facility." By definition, livestock farms with active cropland areas are not "animal feeding operations." The preamble to the CAFO regulations further evidences the intent to exempt farms that possess cropland and recycle manure to the cropland. Specifically, in reviewing the entire CAFO regulatory scheme, the EPA stated that "no permits would be required from owners or operators of operations which recycle all pollutants to the land...." 41 Fed. Reg. 11,458, at 11,459 (1976).

In its holding, the Second Circuit ignored both the language and the express intent of the animal feeding operation definition. The Court effectively divided a single operating dairy farm, of inextricably interdependent parts, into an artificial grouping of nonviable, separate and distinct units. Southview Farm, and dairy farms all over the United States, have recycled animal wastes generated on one portion

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briefed by either party to this case. Rather, the CAFO issue was raised for the first time in an amicus brief filed by the United States three (3) working days before oral argument and long after the parties' briefs had been submitted. Despite the single-sided briefing of this issue, the Second Circuit denied Petitioner's motion for leave to file supplemental brief, opting not to balance the arguments and receive a complete briefing of an issue that ultimately proved central to the decision.

of the facility by applying them to the cropland on other portions of the same facility. The process has been ongoing for centuries. The Second Circuit would inhibit this long-standing, beneficial use of animal waste and the profitable production of dairy products by arbitrarily dividing farms into regulated "non-vegetated lots" and unregulated croplands. The distinction makes no sense and ignores the realities of modern farming. There can be no serious question that crops were grown on Southview Farm. As such, it does not come within the animal feeding operation definition.

Even if Southview Farm qualified as an animal feeding operation, to fit within the CAFO definition, it must meet two further criteria. First, one of two animal unit thresholds must be satisfied. Second, pollutants must be "discharged into navigable waters from a manmade ditch, flushing system or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation." 40 C.F.R. §122.23 and App. B (1994).

Although Southview Farm meets the first, animal unit criterion, it fails the second. At no time were pollutants discharged into navigable waters through a "manmade" device as that term is expressly defined. Manmade devices are limited to those "constructed by man and used for the purpose of transporting waste." 40 C.F.R. §122.23, App. B (1994). (emphasis added). There is no evidence that Petitioners discharged the defuse runoff at issue in this case into navigable waters through such a manmade device. In addition, no pollutants were directly discharged into navigable waters that pass through the facility or come into direct contact with animals housed there.

The Second Circuit's holding evinces a misunderstanding of agricultural production processes and a misapplication of the express provisions of the applicable regulations. The misunderstanding underscores the importance of obtaining the parties' full briefing of each issue that comes before a court. The Court's failure to allow full briefing in this case is critical, especially when the issue upon which full briefing was denied became the lynchpin to the ultimate decision.

C. The Second Circuit Would Render the Agricultural Stormwater Discharge Exemption Enacted by Congress A Complete Nullity.

The Second Circuit's holding would neuter the agricultural stormwater discharge exemption expressly granted by Congress and enacted by the EPA. In amending the Clean Water Act in 1977 to exclude "return flows from irrigated agriculture," Congress stated that "All such sources, regardless of the manner in which the flow was applied to the agricultural lands, and regardless of the discrete nature of the entry point, are more appropriately treated under the requirements of section 208(b)(2)(F)." S. Rep. No. 95-370, 95th Cong., 1st Sess. 35 (1977) *reprinted in* 1977 U.S.C.C.A.N. 4326, 4360. Section 208 refers to the nonpoint source control provisions of the Clean Water Act. 33 U.S.C. § 1288 (1986). Congressional intent could not be clearer.

Congress also voiced its policy relative to agricultural runoff at the time it amended the Clean Water Act to regulate certain forms of industrial and municipal stormwater runoff as point source discharges. At the point in time when Congress specifically brought industrial and municipal stormwater runoff under the point source regulations,

Congress expressly exempted "agricultural stormwater discharges" from the point source definition. 33 U.S.C. §1362(14) (Supp. 1994) (*amending* 33 U.S.C. § 1362(14) (1986)). By definition, agricultural stormwater discharges are not "point sources." *Id.*

As stated by the EPA:

> The following discharges do not require NPDES permits:
>
> . . .
>
> (e) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range land, and forest lands. . . .

40 C.F.R. § 122.3 (1994).

The phrase stormwater was further clarified by the EPA in the agricultural context when it explained that "storm water runoff includes runoff caused by rainfall . . . which flows overland instead of percolation into the soils...." 58 Fed. Reg. 7610, 7614 (1993).

The "discharge" at issue in this case is precisely the type of occurrence that Congress and EPA have specifically addressed. The alleged discharge from Southview Farm constituted a diffuse migration of rainwater, containing manure which had been previously applied to cropland. Such runoff fits squarely within the exemption for agricultural stormwater. The Second Circuit has chosen to ignore the broad exemption created by Congress and implemented by the EPA. Indeed, the Second Circuit has interpreted the exemption out of existence.

D. The Second Circuit's Expansion of Point Source Regulations will Add Substantially to the Costs of Production, Rendering Farm Practices and Businesses Uneconomical.

The direct costs of compliance with the Second Circuit's expanded point source regulations are obvious: permitting fees, legal fees, laboratory fees, engineering fees, monitoring activities and recordkeeping. As applied to modern dairy farms, the costs of these efforts, by any measure, will be substantial. For instance, daily monitoring and recordkeeping of the waste produced by 100 animals and subsequently disbursed on 100 acres of land (an average or even small farm in today's agriculture) would involve a great deal of time and voluminous records.

The not-so-apparent costs of regulating the application of animal waste to cropland as a point source are, however, even more substantial. Given the Second Circuit's unwillingness to accept Congress' agricultural stormwater exemption, producers could only hope to avoid the point source characterization of rain-driven runoff by applying manure during extended periods of dry weather. Producers would likely be required to possess increased storage capacity and twice the equipment in order to apply animal waste during these limited windows of permissible application. For the remainder of the year, the substantial additional investments in equipment would lie idle. Even then, a subsequent rainfall could result in what the Second Circuit would characterize as a point source discharge. Similarly, the additional time required to implement new production methods and ensure compliance will substantially increase labor costs. Finally, insurers and lenders in the agricultural sector are watching with a close eye and are concerned that

the costs of insurance and credit will rise as a result of the Second Circuit's decision.

The Second Circuit's imposition of point source permitting will add substantially to the costs of recycling manure produced on the farm. These added costs or the alternate cost of disposal and purchase of substitute chemical fertilizers will place extreme financial pressures on an industry already working on reduced margins.

III. THIS CASE PROVIDES AN APPROPRIATE CONTEXT FOR THIS COURT TO ADDRESS THE IMPORTANT QUESTIONS PRESENTED BY THE PETITION.

The impacts of the Second Circuit holding in this case will be felt both on the farm and in surrounding local and state economies. Costs of regulatory compliance will further erode the diminishing operating margins realized by dairy farmers. The mandated permitting of all manure spreading vehicles and cropland will substantially add to operating costs. The broad and extreme interpretation of the concentrated animal feeding operation provision will force the industry toward smaller, less efficient and more costly operations. The refusal to recognize the agricultural stormwater exemption will place all manure application processes at risk due to the inability to accurately predict or control weather. The loss of farms and farm production that will result will impact local economies dependant upon their agricultural tax base and the agricultural multiplier to support their economies. In addition, there will be a cost to be paid by the consumer, who has come to know, depend upon and demand low-cost, high-quality food.

It is precisely for these reasons that Congress chose to regulate the defuse discharges associated with agricultural practices as nonpoint discharges to be controlled through state and local land use decisions. It is also precisely for these reasons that the point source discharge and concentrated animal feeding operation definitions should be interpreted consistent with viable agricultural practices and express Congressional mandates. Congress adopted the agricultural stormwater discharge exemption for legitimate and practical reasons. The Second Circuit should not be allowed to override Congressional policy through tortured interpretations of clear and unequivocal terms. This is clearly an occasion for judicial restraint -- not judicial legislation.

CONCLUSION

For the reasons stated, the Northeast Dairy Producers Association respectfully requests that this Court grant certiorari.

March 29, 1995

Respectfully submitted,

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APPENDIX A

CONSENT OF ALL PARTIES TO THE FILING OF AN *AMICUS CURIAE* BRIEF BY THE NORTHEAST DAIRY PRODUCERS ASSOCIATION IN SUPPORT OF PETITIONERS

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Syracuse, NY 13202

Dear Tom:

I hereby consent to the filing of an amicus brief on behalf of the Northeast Dairy Producers Association, et al., in support of petitioner in Southview Farm, Inc. v. Concerned Area Residents for the Environment.

Yours truly,

Timothy S. Bishop
Counsel of Record
for the Petitioner

TSB:am

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FEB 08 1995

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March 21, 1995

Thomas M. Shephard, Esq.
Bond, Schoeneck & King, LLP
One Lincoln Center
Syracuse, New York 13202-1355

Re: Concerned Area Residents for the Environment, et al
v. Southview Farm et ano

Dear Mr. Shephard:

I am in receipt of your letter, dated March 20, 1995, in connection with the above-referenced matter.

Please be advised that, on behalf of the plaintiffs, I hereby consent to your filing an amicus brief on behalf of the Northeast Dairy Producers Association. I am enclosing a signed copy of this letter, as per your request.

Very truly yours,

Dan O'Brien

DOB:es

Enclosure

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BOND SCHOENECK & KING
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March 20, 1995

Donald W. O'Brien, Jr., Esq.
Woods, Oviatt, Gilman,
Sturman & Clarke
44 Exchange Street
Rochester, New York 14614

Re: Southview Farm and Richard H. Popp v.
Concerned Area Residents for the Environment, et al.

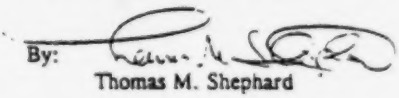
Dear Mr. O'Brien:

On behalf of the Northeast Dairy Producers Association, we request your consent, as attorney for Respondents, Concerned Area Residents for the Environment ("C.A.R.E."), to file a brief as *amicus curiae* in the above-noted matter. Please signify your consent to the filing of an amicus brief by the Northeast Dairy Producers Association by signing on the line provided below and return one copy of this letter to me at the address listed above.

Please call if you have any questions. Thank you for your assistance in this matter.

Very truly yours,

BOND, SCHOENECK & KING, LLP

By: 
Thomas M. Shephard

TMS/cma

Consent of Respondents, C.A.R.E., to the filing of an *amicus curiae* brief by the Northeast Dairy Producers Association

By: _____
Donald W. O'Brien, Jr.
Woods, Oviatt, Gilman, Sturman
& Clarke
Attorneys for Respondents, C.A.R.E.